THE CORPORATION JOURNAL

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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Facsimile Signatures on Stock Certificates

The Wisconsin law now authorizes the use of facsimile signatures, engraved or printed, of the proper officers on stock certificates if such certificates are signed by a transfer agent or transfer clerk and by a registrar. In any event the seal may be a facsimile.

Our Portland Office Changes Its Address

The Portland, Maine, office of The Corporation Trust Company, is now located at 443 Congress Street. We were forced to vacate the old premises, where we had been for many years, because of the demolition of the building.

Index to Volume X of The Journal

An index to Volume X of The Corporation Journal (18 monthly issues—October, 1931 to June, 1933), has been made and printed, Journal size. To any one desiring the index we shall be glad to mail a copy, on request—until the supply is exhausted.

Kenneth Kingsley

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose, is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for October

Foreign Corporations and New Legislation

By J. E. Thompson

Officers of a corporation doing business in a foreign state should see to it that new legislation is watched carefully on behalf of their corporation for enactments which may affect its status in that state. To this end, in addition to whatever other safeguarding provisions are made, the corporation should assure itself of adequate representation within the state by appointing a statutory agent fully aware of the significance and importance of the designation, and capable of justifying the appointment by promptly calling to the attention of counsel for the corporation any new laws affecting it so that proper steps may be taken to maintain the corporation's statutory standing. The feeling that ability to represent properly involves no more than the agent's presence in the state has resulted, no doubt, in the appointment by many corporations of an employee as agent, with no thought given to the watching of legislation by the local representative, or of the agent's opportunities and capabilities in that direction. The danger in this is evidenced by the recent action of the law making bodies in Texas, Pennsylvania and Illinois.

In Texas, Senate Bill 52, Laws of 1933, effective August 30, 1933, requires every foreign corporation *qualified to do business in the state*, to file with the Secretary of State within ninety days after such effective date, a power of attorney designating an agent for service of process,—such designation to remain effective for a period of four years after the corporation has withdrawn or ceased to do business in Texas. In case of death, resignation, or removal of the agent the corporation must at once make substitution by similar power of attorney. Corporations seeking a permit must also file such power. The penalties imposed for noncompliance include inability to maintain actions in the state courts, and a fine of $50 a week, for each week's failure to file such power.

In Pennsylvania, Senate File No. 262, Laws of 1933, (cited as the Business Corporation Law), effective July 3, 1933, requires *every foreign business corporation previously admitted* to secure a certificate of authority from the Department of State within ninety days after the effective date. Before such certificate of authority may be procured, advertisement of intention to apply is required. Contracts entered into while doing business without such certificate are unenforceable before compliance and payment of a fine of $250.

In Illinois, Senate Bill 225, Laws of 1933, (cited as The Business Corporation Act) effective July 13, 1933, provides for a registered office, and a registered agent, either individual or corporate, having a business office identical with the registered office. The Attorney-General has held that *every corporation authorized to do business in the state* is required to designate a registered office and agent in accordance with the provisions of the Act.

The application of these new laws to foreign corporations already qualified indicates the importance of having all such legislation painstakingly and intelligently watched and promptly reported.

Domestic Corporations

Delaware.

Attachment of shares of stock in a Delaware corporation standing in the name of a nonresident of Delaware. Over two thousand shares of stock of a Delaware corporation standing in the name of or alleged to belong to a nonresident of Delaware were attached by leaving a certified copy of the writ with the corporation's resident agent,—as provided by the statute, which carries no provision for notice. There having been no general appearance judgment went for plaintiff—at the second term after the issuance of the attachment writ. Petition to vacate the judgment on the ground that as the statute makes no provision for notice it is violative of the due process clause (14th Amendment) of the Federal Constitution. In denying the petition the Delaware Superior Court for New Castle County goes rather fully into the genesis of the statute—Magna Charta, the common law, and the differing custom of London—, and constructive notice. The court says: "The defendant contends that stock is still so materially different in its nature from real tangible property that there would not be the same implication of notice to the defendant from its seizure. He fails to point out, however, in what respect its seizure in what, in effect, amounts to garnishment proceedings, differs from the seizure of a debt, or other property, in the same kind of a proceeding under the custom of London, or under a statute based thereon. Admitting that neither section 95 nor 96 of the General Corporation Law compel notice to the defendant by the corporate agent served with process, the procedure in that particular in no sense differs from the garnishment of an ordinary debt due the defendant. Viewed from the standpoint of abstract justice and absolute fairness to the defendant, some fair provision for notice to him other than by the implication to that effect arising from seizure alone, may be desirable, but considering the history of the statute, it would seem that the fact that it does not contain any such provision does not make it invalid under the due process clause of the Fourteenth Amendment. * * *. Applying the principles above stated in *Pennoyer v. Neff* (95 U. S. 714) and in *Herbert v. Bicknell* (233 U. S. 70), our conclusion, therefore, is that the seizure, or the statutory proceeding equivalent to it applied in this case, gave sufficient constructive notice of the proceedings to the defendant; and as judgment, under the provisions of the statute, could not be entered until the second term, the defendant had ample opportunity to be heard in his own behalf." *James H. McLaughlin v. Henry M. Bahre et al.*, 166 A. 800. Aaron Finger (of Richards, Layton & Finger) of Wilmington, for plaintiff. Christopher L. Ward, Jr. (of Marvel, Morford, Ward & Logan), and J. J. Morris, Jr. (of Hering & Morris), Wilmington, for defendants.

An agreement vesting voting power on stock, to "trustees" having no interest in the stock, is not to be considered as an irrevocable proxy. A regular Voting Trust Agreement covering stock of a Del-

aware corporation was entered into by a large number of the stockholders; the stock transfer tax liability (in all of its applicable features) interposed a prohibitive expense barrier; so a supplementary amending agreement was proposed and accepted by certain of the shareholders under the terms of which the stock certificates were to be sent in to be stamped with a legend to the effect that the shares represented thereby were subject to the Voting Trust Agreement and giving to the trustees (named in the Voting Trust Agreement) the right to vote such stock. Some stockholders who had had their certificates imprinted as stated subsequently gave their proxies to be used at a meeting for election of directors. A master was appointed to conduct the stockholders meeting (Section 31, General Corporation Law of Delaware). Exceptions were filed to his report; the Delaware Court of Chancery (New Castle County) sustains the master who says that, assuming that the original Voting Trust Agreement as modified is to be treated as a proxy, such proxy is not an irrevocable proxy (the alleged power to vote was not coupled with any property or other interest), and "any signer thereof may revoke the authority given therein in respect of his stock by voting personally or by giving another proxy." So, the subsequently executed regular proxies were valid and the ticket for which these proxies were voted is declared elected. *In re application of Chilson* for summary order for election of directors of Public Industrials Corporation, July 27, 1933. John J. Morris, Jr., of the firm of Hering & Morris, all of Wilmington, and Ernest A. Fintell, of the firm of MacFarland, Taylor & Costello, of New York, for exceptants. E. Ennalls Berl, of the firm of Ward & Gray, of Wilmington, contra.

Right of nonvoting (ordinarily) preference shares to elect majority of board of directors. The charter of a Delaware corporation provides that no voting power shall adhere to the "preference stock" unless dividends on such stock for six quarterly periods (whether consecutive or not) shall be unpaid; then voting power comes into being, including right to elect a majority of the board of directors, "so long as the surplus of the corporation applicable to the payment of dividends shall be insufficient to pay all accrued dividends." At a regular annual meeting the preference stockholders claimed the right to elect a majority of the board; passing of dividends for six months was conceded; it was argued however that the surplus was sufficient to pay such dividends and so that the two conditions precedent to a right to vote did not exist; it was urged that the nonpayment of the dividends established the right and that the provision relating to surplus was a condition subsequent. The meeting was adjourned by vote of the common stockholders; the preference stockholders continued in meeting and elected a majority on the board; this majority then elected officers. On petition to the Delaware Court of Chancery to determine the persons entitled to be directors and officers, the court holds that the two provisions of the charter must be met before voting rights adhere to the preference stock, that as a matter of fact the surplus was insufficient to pay accrued unpaid

Delaware—Concluded.

dividends and so that both conditions precedent existed, and that the preference shareholders, under the circumstances, were within their rights in continuing the meeting and in proceeding as they did. Preliminary restraining order (against the directors and officers so elected) is denied. *Petroleum Rights Corporation v. Midland Royalty Corporation, et al.*, decided June 26, 1933. Aaron Finger, of the firm of Richards, Layton and Finger, and Charles F. Richards, all of Wilmington, for petitioner. Hugh M. Morris and Edward D. Steele, Jr., of Wilmington, for certain defendants. Robert H. Richards, Jr., of Wilmington, for other defendants.

Florida.

On the pleading of usury by a corporation. A motion to strike certain portions of an amended answer, attempting to set up the defense of usury by the defendant Florida corporation, was granted, and on appeal the Supreme Court of Florida affirms the order. Chapter 10096, Florida Acts of 1925 provides that no corporation may interpose the defense of usury in any action in any court in the state. The court says: "It is well settled that, where a corporation accepts a charter, it takes it *cum onere*, and must enjoy it subject to the conditions prescribed by the law under which it is created, or not enjoy it at all. * * *. It has been held, and properly so, that powers given to corporations which cannot be exercised without disregard of restrictions with which they are coupled cannot be exercised at all. * * *. The corporation here involved took its charter under and became the creature of Chapter 10096, Acts of 1925 (referred to above), and one of the provisions and conditions under which it acquired its existence was that it should not interpose the defense of usury in any action in any court in this state. It is bound by that condition." *759 Riverside Ave., Inc. et al. v. Marvin*, 147 So. 848. H. L. Anderson and Newcomb Barrs, both of Jacksonville, for appellants. Martin H. Long and Axtell & Rinehart, of Jacksonville, for appellee.

Indiana.

Stockholders agreement restricting sale of respective stockholdings, the terms of such agreement being subsequently embodied in a by-law, is not abrogated by a later repeal or amendment of the by-law. The Supreme Court of Indiana noting that the validity of both the agreement and the by-law (referred to in the caption to this digest) have been adjudged valid in a case already decided, and further stating that provision is made in the corporation's by-laws for the amendment thereof, says that the repeal or amendment of the restricting by-law "could not alter or in any manner relax the restrictions upon the sale of the stock between the parties thereto, which they themselves had placed there by their own agreement, and became a part

consideration for the issuance of the stock by the corporation itself. Such valid and binding agreement between the parties of course could not be changed or affected by an amendment or repeal of the by-law." *Doss v. Yingling et al.*, 185 N. E. 281. Appearances: Chester Y. Kelly and Piety & Piety; Paul Shafer and Walker & Hilleary; all of Terre Haute.

Kansas.

On the exceeding of its charter powers by a corporation. The Supreme Court of Kansas says here: "The charter board could not create a corporation for purposes other than set forth in the statute and could not enlarge the statutory powers of any corporation organized for a lawful purpose. And in addition special provision has been made for this precise form of action (quo warranto to oust) when a corporation abuses or exercises powers not conferred by law. * * * It is the duty of the court to see that a corporation does not exercise powers beyond its charter." *State ex rel. Boynton, Attorney General, v. Wheat Farming Co.*, and *Same v. Sledd Farm Corporation*, 22 P. (2d) 1093.

New Jersey.

Participation in the net profits of a corporation by the officers thereof, in addition to fixed salaries. In The Corporation Journal for December, 1932, page 272, under the same caption as appears above, it was said: "A by-law of a New Jersey corporation, adopted many years ago, provides for the distribution of a certain percentage of the annual net profits among the senior officers, named by positions, on the basis of respective stated percentages of the fund so allocated. Suit by a stockholder against present officers, participants in the fund, but not such until years after the adoption of the by-law, to test the validity of the by-law, and for a decree directing repayment of distributions already made and enjoining future distributions. An injunction pendente lite was granted by a United States District Court (New York). The United States Circuit Court of Appeals, Second Circuit, reverses the judgment, finding that the right to pay compensation by way of a percentage of the net profits is recognized in New Jersey, and holding that the by-law was lawfully passed and is valid, effective and controlling, and that the fact that the officers in question as a result of the by-law provision coupled with the great success of the company received unusually large personal service compensation does not justify a court of equity in attempting to substitute its judgment for the judgment of the stockholders whose affair it is, in the absence of fraud." On May 29, 1933, the United States Supreme Court reversed the decree of the Circuit Court, vacated the decree of the district court dismissing the bills on the merits, and remanded the case to the district court with directions to

New Jersey—Concluded.

reinstate its decree granting injunction pendente lite and for further proceedings. The Court says: "While the amounts produced by the application of the prescribed percentages give rise to no inference of actual or constructive fraud, the payments under the by-law have by reason of increase of profits become so large as to warrant investigation in equity in the interest of the company. Much weight is to be given to the action of the stockholders, and the by-law is supported by the presumption of regularity and continuity. But the rule prescribed by it cannot, against the protest of a shareholder, be used to justify payments of sums as salaries so large as in substance and effect to amount to spoliation or waste of corporate property. The dissenting opinion of Judge Swan indicates the applicable rule: 'If a bonus payment has no relation to the value of services for which it is given, it is in reality a gift in part and the majority of stockholders have no power to give away corporate property against the protest of the minority.' The facts alleged by plaintiff are sufficient to require that the district court, upon a consideration of all the relevant facts brought forward by the parties, determine whether and to what extent payments to the individual defendants under the by-laws constitute misuse and waste of the money of the corporation." *Richard Reid Rogers v. George W. Hill et al.*, 53 S. Ct. 731, 289 U. S. 582.

Uncollected checks representing dividends declared before dissolution proceedings and uncollected checks representing dissolution or liquidating dividends. A dividend declared by a going corporation represents a debt due the stockholders; after dissolution proceedings have begun stockholders who have not made collection on their old dividend checks stand in the same position as other creditors; their claims must be presented; those claims not presented are barred; "the balance of the sum reserved for old dividends is a part of the general assets and should be distributed among the stockholders pro rata their stockholdings." But in relation to uncollected checks representing a liquidating dividend: The setting aside by the trustees of so much a share for this purpose had the same effect on the rights of the stockholders as a decree of distribution; the stockholders are not mere creditors; "the money set apart for them belongs to them severally in equity and is not available for general distribution among the whole class of stockholders." So says the Court of Chancery of New Jersey which directs the receiver "to file a supplemental report naming the stockholders who have not collected their share in the assets distributed in dissolution, together with the amount allocated to each" and to pay this sum into court. *In re Central New Jersey Land and Improvement Co.'s dissolution*, 166 A. 705. Hopkins, Vorburger & Dickson, of Hoboken, for Hudson Trust Company, receiver. Louis J. Platt, of Newark, for stockholder.

New York.

On preemptive right of stockholders to purchase treasury stock, ratably. Complaint here is that two directors of a corporation acquired by purchase a block of the corporation's stock held in its treasury without affording other stockholders an opportunity to participate ratably in the purchase. The judgment of dismissal below is reversed by the New York Supreme Court, Appellate Division, Second Department. The discussion of the subject is interesting, as indicated by the following leads taken from the opinion: "The general rule is that a stockholder has a preemptive right to purchase the stock of his corporation only when there is an increase of capitalization and a new issue floated." "But the assertion that no preemptive right may vest in a stockholder in respect of unissued authorized stock has been disavowed as being too broad"—citing a case. "It is true that that case does not concern itself with treasury stock. But it declares a principle applicable alike to all forms of stock, etc." "It is not intended to indicate that every reissue of treasury stock may properly be subjected to a claim of preemptive right." *Hammer v. Werner et al.*, 265 N. Y. Sup. 172. David M. Neuberger, of New York City (Murray Ratner, of New York City, on the brief), for appellant. Donald Havens, of New York City (Francis Goertner, of New York City, on the brief, for respondents.

Texas.

Mandamus and the statutory unrestricted right of shareholders to examine books of their corporation. The Commission of Appeals of Texas, Section B, reverses the judgment of the Court of Civil Appeals and affirms that of the District Court granting prayer of stockholders for writ of mandamus compelling officers of their corporation to permit examination of its books. The court says that at common law the right to inspect was not an absolute one it being necessary to show that the permission was asked in good faith and was for an honest purpose. "The authorities are somewhat in conflict as to the absolute or qualified character of a stockholder's statutory right of inspection (Rev. St. 1925, Art. 1328). The decided weight of authority, however, is that when the right is conferred by statute without restriction it is an absolute one. It does not follow, however, that in every instance this right will be enforced by the courts. It must be borne in mind that the enforcement of the right is by mandamus. Such writ is not issued as a matter of right but in the exercise of a sound judicial discretion which allows the court to view other considerations than the mere legal right of the relator." The stockholder need not allege or prove good faith and honest purpose but if the corporation pleads and is able to establish by proof a state of facts sufficient to show that the shareholder "is actuated by corrupt or unlawful motives, the court will not, by the issuance of its writ of mandamus, aid him to consummate such corrupt and unlawful purposes." *Moore et al. v. Rock Creek Oil Corporation et al.*, 59 S. W.

Service of the Washington

Securities Act

The Washington office of The Corporation Trust Company will handle the filing of Registration Statements with the Securities Division of the Federal Trade Commission for the issue of new securities, ensuring not only early filing but prompt definite confirmation (telegraphed if desired) and prompt definite information as to obstacles if any may be found by the Commission. It will also handle requests for photostat or typewritten copies of Registration Statements filed with the Commission, requests for information, etc. The fees charged for this personal service are based on individual requirements in each case, and are very small.

Established in 1908 the Washington organization of The Corporation Trust Company, with its headquarters in the Munsey Building—1329 E. Street, N. W.—is the development of 26 years of experience in serving attorneys for business corporations. The fast, frictionless way in which it functions in placing documents on file, procuring desired official information, expediting attention to matters in work, etc., is the result of long familiarity with all aspects of official activities and a quarter of a century's high standing in official Washington.

The Corporation Trust Company's office in connection with:- - - -

Supreme Court

The Corporation Trust Company's Supreme Court Service brings you: First, in a convenient loose-leaf binder, indexed and cross-indexed for quick accessibility, the titles of all cases at that moment before the court * * * digest of the question involved in each (indexed both by case title and subject) * * * designation of how the case reaches the court—by appeal or certiorari, and from what court * * * notations on each case of any arguments or motions made in court or orders entered, and digests of written opinions rendered, up to the start of your subscription * * * proposed schedule of arguments and recesses for the entire term; second, mailed on each Decision Day through the term, current reports on orders, motions and arguments, and digests of opinions, all prepared and arranged for addition to the Service from week to week so a complete story of the progress of each case will be shown; third, complete official printed text of each written opinion mailed within a day or two after being announced by the court. In addition, when the subscriber is particularly interested in a certain case, he may arrange to receive telegraphed or telephoned advice of the purport of the opinion in that case immediately upon its being handed down. For the small additional fee of $5.00 a typewritten copy of the complete opinion will be mailed the same day.

Miscellaneous

The Washington office of The Corporation Trust Company will procure authentication of documents at the State Department or at the various foreign embassies and legations; file papers for attorneys with the various governmental departments and bureaus; will procure copies of Interstate Commerce Commission orders, Commerce Department bulletins, Treasury Department bulletins, Census Bureau documents and other governmental publications; will furnish information and data as to corporation organization and qualification procedure for the various foreign countries.

Write or telephone the nearest office of The Corporation Trust Company (see list on page 4) or direct to the Washington office, Munsey Building, Washington, D. C.

Texas—Concluded.

(2d) 815. Dorenfield, Foster & Fullingim, of Amarillo, for plaintiffs. Underwood, Johnson, Dooley & Simpson, of Amarillo, for defendants in error.

Utah.

On the purchase by a corporation of its own stock. Affirming the judgment below for plaintiffs holding defendants liable for breach of their agreement to repurchase preferred stock the Circuit Court of Appeals, Tenth Circuit, says: "One of the most stubbornly fought conflicts in corporation law is over the power of a corporation to purchase its own stock." The English trust fund doctrine is stated as is the so-called "modern rule" to which "undoubtedly the majority of the jurisdictions in the United States have held," this being that in the absence of statutory or charter prohibition, and without express authority, a corporation may purchase its own shares, if done in good faith and without injury to creditors. "Other decisions take various middle grounds." "The Supreme Court of the United States has not passed directly on the point, so far as we are aware." "The point is becoming of less practical importance because statutes are being enacted, from time to time, marking expressly the limits of the power." "All that is necessary in this case is to hold, as we do, that a corporation may obligate itself by an agreement made at the time and as a part of the contract of sale, to repurchase preferred shares which are not a part of its permanent capital structure, and that where rights of creditors are not in issue, the solvency of the corporation at the time the contract was made is not important." *Consolidated Music Co. et al. v. Brinkerhoff Piano Co.*, 64 F. (2d) 884. D. A. Skeen, of Salt Lake City (Jesse R. S. Budge, A. B. Irvine, and Sam D. Thurman, all of Salt Lake City, on the brief), for appellants. Grant H. Bagley, of Salt Lake City (Waldemar Van Cott, P. T. Farnsworth, Jr., W. Q. Van Cott and B. R. Howell, all of Salt Lake City, on the brief), for appellee.

Foreign Corporations

California.

Action on a note by an unlicensed foreign corporation. A Texas corporation, not licensed to do business in California, agreed, in Texas, to purchase a certain prospective cotton crop to be grown in California, and advanced, under the agreement to purchase, a certain sum to finance the production of the crop, taking a note for the advance together with a crop mortgage. Action on the note. One defense presented was that the Texas corporation was not licensed under the California foreign corporation laws, was doing business in the state, and so was without capacity to sue in the state courts. The California District Court of Appeal, Fourth District, holds that "there is ample evidence to support the court's findings upon the subject" which were that the Texas corporation at the time of the

transaction was engaged in California in interstate commerce solely and not in intrastate commerce there, and so was entitled to sue in the state courts. *Crespi & Co. v. Giffin et al.*, 23 P. (2d) 47. Irvine P. Aten, of Fresno, for appellant. G. L. Aynesworth, of Fresno, for respondent.

Minnesota.

On the right of Minnesota court to entertain suit against stockholder of a certain Delaware corporation who holds stock partly or wholly unpaid. The order of an assessment, below, against a stockholder of a Delaware corporation, by the receiver for the corporation, is reversed by the Supreme Court of Minnesota,—and, "in the suit brought by leave of court, the applicable law will be applied to the facts as brought out in the trial." The court says, on the question of jurisdiction: "The first proposition made by appellant (the stockholder) is that the court has no jurisdiction to make an order of assessment, since this was a Delaware corporation. It is not necessary to decide whether a court of this state has authority to assess stock of a foreign corporation whose stock is subject to double liability, so called. It appears in this case that this corporation was organized under the Delaware law to do business solely in this state. It here engaged in business and nowhere else. Here the claims allowed against it were contracted. Here all its stockholders reside. In fact, it is not claimed that any stockholder other than Mr. Glynn (the one against whom the order of assessment was made) owns stock which was not fully paid for. In a case of that sort, no good reason can be urged against the right and duty of our courts to entertain jurisdiction to enforce in behalf of creditors payment in full against the lone stockholder who holds stock partly or wholly unpaid. And we so hold." *United States Rubber Co. v. Eagle Transp. Co. et al.*, 248 N. W. 729. Appearances: Junell, Driscoll, Fletcher, Dorsey & Barker and David Bronson, all of Minneapolis; Courtney & Courtney, of Duluth, and John T. Kenny, of Minneapolis.

Mississippi.

Making loans negotiated out of state on realty located in state does not constitute doing business in state. For present purposes the question, here, is whether or not the appellee (a Louisiana corporation, not licensed to do business in Mississippi) was doing business in Mississippi. The Supreme Court of Mississippi, Division A, affirming the decree below dismissing the bill of complaint against the corporation, says (on this point): "[The corporation] was engaged in the mortgage loan business, and made a number of loans which were secured by mortgages on lands located in this state. It had no office or agent in this state. It did not solicit through agents loans in this state, and such loans as it made that were secured by property located in this state were negotiated at or through its office in New Orleans. We do not think this constituted

doing business in Mississippi within the purview and meaning of the statutes of this state." *Dodds v. Pyramid Securities Co., Inc., et al.*, 147 So. 328. Ford, White & Morse and J. L. Taylor, all of Gulfport, and Brady, Dean & Hobbs, of Brookhaven, for appellant. Rushing & Guice, of Biloxi, for appellees.

New York.

New York Federal courts take jurisdiction of controversy involving internal affairs of a Delaware corporation. The fundamental question here involved is whether or not the rights of the holders of stock of a preferred class in a Delaware corporation have been infringed by virtue of the creation of other classes of stock, by amendment of the corporation's charter, than were authorized at the time such preferred class stock was acquired by the complainants. Originally brought in a New York state court the cause was removed to a Federal district court in New York. Deciding the matter on appeal the United States Circuit Court of Appeals for the Second Circuit holds for the denial of the prayer for an injunction and so modifies the decree that dismissal of the bill for want of equity results. The court says: "Such controversies, it cannot be denied, are usually matters the courts of the state of the domicile can decide with greater convenience and without the danger of divergent, if not contrary, decisions on the same issues in different jurisdictions. Yet there are instances when courts may and should take jurisdiction of the subject matter even though it involves the conduct and management of the internal affairs of a corporation domiciled elsewhere. We think this is such an instance. The defendant is a Delaware corporation by legal creation but in every real sense is of New York only where all its business is done, all its property is located, and all its records are kept. The constitutionality of the Delaware statute is not an issue for it was in effect before this corporation was organized; and the statute has already been interpreted by the courts of Delaware. These considerations seem to us make the balance of convenience in favor of deciding to exercise as a matter of discretion the jurisdiction we have as a matter of law." *Harr, Jr., as Executor, etc. v. Pioneer Mechanical Corporation*, 65 F. (2d) 332. Albert M. Lee, of New York (J. George Levy, of counsel), for plaintiffs-appellants. Cotton, Franklin, Wright & Gordon, of New York (Paxton Blair, of New York, of counsel), for appellee.

Stockholder of foreign corporation doing business in New York held liable for compensation due employee for services rendered the corporation in New York. Such is the caption to a digest of a case, so decided by a New York Municipal Court, in The Corporation Journal for January, 1933, at page 299. The New York Supreme Court, Appellate Term, First Department, in the present case, affirming the order below, reaches a like conclusion. *Greenberg v. Rosenwasser et al.*, 264 N. Y. S. 529. John G. Turnbull, of New York City, for appellant. Simon Meisler, of New York City, for respondent.

North Dakota.

On "doing business" and "service of process." The North Dakota statutes provide that if the Secretary of State has not been appointed agent for service of process on a foreign corporation, and if the corporation cannot be personally served, as prescribed by law, summons may be served on any person who shall be found within the state acting as the agent of, or doing business for, the corporation, but only if the corporation has property within the state or the cause of action arose therein. In the instant case the cause of action arose in the state. Service was made (the other service of process possibilities not existing) on one who working on salary and commission solicited orders for the defendant foreign corporation, in North Dakota, such orders being forwarded to the corporation's home office for approval. All shipments of machinery covered by the accepted orders were made from a point without North Dakota. The salesman was given authority to and did collect payments on account of sales made by him. This, so finds the Supreme Court of North Dakota, affirming the judgment below, represents the carrying on of business in the state by the foreign corporation and so by the salesman on its behalf (whether or not he was an "agent"), and on such finding holds that the service was good. *Wheeler v. Boyer Fire Apparatus Co.*, 248 N. W. 521. E. R. Sinkler and G. O. Brekke, both of Minot, for appellant. B. H. Bradford and G. S. Wooledge, both of Minot, for respondent.

Tennessee.

Liability of stockholders for debts contracted by unlicensed foreign corporation doing business in state. Suit here (in Indiana courts) is against common stockholders in an Indiana corporation, organized to do business in Indiana, on account of their alleged liability, as partners, for certain debts of the corporation contracted by it while doing business in Tennessee without being licensed or domesticated under the laws of that state. The Appellate Court of Indiana, in Banc, affirming the judgment below in favor of the defendants, emphasizes the facts that the corporation was organized to do business in Indiana and not in Tennessee, and that no affirmative acts of participation are alleged to have been done by the stockholders in connection with the business carried on by the corporation in Tennessee. Asking the question—"By being mere common stockholders in an offending corporation will the law deem them to be participating stockholders?", the court answers in the negative. Three usual situations are mentioned (as to a corporation): "(1) Where it is organized or authorized by its by-laws to do business in the offended state, (2) Where it is organized or authorized by its by-laws to do business in any state or states to be selected by its governing officers, (3) Where it is organized or authorized by its by-laws to do business alone where it is organized, but where the managing officers through their act alone have it do business in

the offended state. In the first two classifications the courts have had no difficulty in holding that the stockholders are at least prima facie participating. The instant case falls within the third classification." *Towle v. Beistle et al.*, 186 N. E. 344. Thad M. Talcott, Jr., and Walter R. Arnold, both of South Bend, for appellant. Parker, Crabill, Crumpacker & May, Voor & Grant, DuComb & DuComb, and L. M. Hammerschmidt, all of South Bend, for appellees.

Texas.

Right to sue in Texas courts in connection with an interstate transaction by unqualified foreign corporation doing business in Texas. An order was given in Texas to a concern in Iowa for machinery to be shipped to Florida. The seller is a corporation foreign to Texas, allegedly not licensed to do business in Texas, and, allegedly, doing business in that state. The order was accepted in Iowa; by its terms the buyer was to pay the freight on the shipment from Iowa to Florida. In an action by the seller on the contract the buyer alleged as a defense that the seller being a foreign corporation, doing business in Texas but not being licensed, did not have the right to sue in the Texas courts. The Court of Civil Appeals of Texas (Waco), affirming the judgment below for plaintiff, says, in effect, that the transaction involved was one in interstate commerce, that this is so regardless of where the contract was accepted, and also that this is so even though the Iowa concern bought the machinery in question in Fort Worth, Texas, to carry out the contract and had it shipped from that point to Florida, and, being an interstate contract or transaction the Texas foreign corporation laws do not apply "even though the corporation did other business in Texas." *Little v. Armstrong Mfg. Co.*, 58 S. W. (2d) 849. Grover C. Morris and Joe L. Hill, both of San Antonio, for plaintiff in error. R. L. House, of San Antonio, for defendant in error.

Selling goods through traveling salesmen does not, without more, constitute doing business in Texas by unqualified foreign corporation. Plaintiff-appellant, here, is a Missouri corporation; it has traveling salesmen operating in Texas; orders taken are forwarded to Missouri for acceptance or rejection; goods on accepted orders are shipped from Missouri to the purchasers in Texas. Such an order is the basis of the present action. Defendant-appellee (there was a cross-action) contended that "the suit brought by plaintiff was wrongfully brought" inasmuch as it is a corporation foreign to Texas, doing business in Texas, and not licensed to do business in the state. The Court of Civil Appeals of Texas (Galveston) overrules the contention saying that "such transactions have been repeatedly held by the courts to be interstate commerce," and, in effect, that the Texas foreign corporation laws do not apply to the Missouri corporation, in the instant case, on the evidence. *Shapleigh Hardware Co. Inc. v. Keeland Bros., Inc.*, 60 S. W. (2d) 510. Aldrich & Crook, of Crockett, for appellant. D. A. Nunn and S. A. Denny, both of Crockett, for appellee.

Washington.

Foreign corporation engaged in state in interstate commerce only may sue in state court though not qualified. Plaintiff below, an Illinois corporation, not qualified to do business in Washington, sold merchandise to a resident of Washington under a contract which "is manifestly one establishing the relation of seller and buyer,"—no agency, and which called for shipments of goods f.o.b. point without the state, as buyer saw fit to order. Action on the contract against the buyer and his sureties. Judgment of dismissal is reversed by the Supreme Court of Washington. The court, after noting that "the contract carefully avoids anything that would constitute transaction of business within this state, as such contracts usually do," says: "The evidence shows appellant to have been engaged solely in interstate commerce. That being so, its instituting an action in this state to recover an indebtedness does not constitute doing business in the state." *W. T. Rawleigh Co. v. Harper,* 22 P. (2d) 665. J. Dorman Searle, of Chehalis, for appellant.

TAXATION

Alabama.

Charter-stated or actual home or chief office of domestic corporation as situs for local taxation of its shares of stock. The sole question presented here on appeal is "What was the situs of the corporation for purpose of taxing its shares?"; action by the City of Birmingham against an Alabama corporation (for taxes over a period of years on its shares) whose principal office in the state is named in its charter (as required by the Alabama corporation law) as Lewisburg. Developments resulted in the principal office being located at Birmingham; it was never at Lewisburg; no change in designation by amendment. The Supreme Court of Alabama, sustaining Birmingham's claim, says: "As a broad principle of public policy the burdens of taxation should be borne in fair proportion by the interests which have the benefits and protection of government. In the matter of shares in domestic corporations our statute fixes this situs as its 'home or chief office' in this state. It is contemplated, as of course, that this will be the home or chief office in fact. The law contemplates the charter shall truly designate such situs. Any dereliction in this regard should not be permitted to furnish the basis for evasion of taxes. We, therefore, adopt as the view best supported in principle, and it seems by the majority opinion in other states, that when the charter location has become fictitious, working an evasion of taxes at the situs of its 'home or chief office,' the charter designation will be disregarded in matters of taxation." *Alabama Clay Products Co. v. City of Birmingham,* 148 So. 328. Smyer, Smyer & Bainbridge, of Birmingham, for appellant. W. T. Wynn and Jas. H. Willis, both of Birmingham, for appellee.

Florida.

State chain store license tax act upheld with invalid parts deleted. On March 13, 1933 (The Corporation Journal for May, 1933, page 402) the United States Supreme Court held invalid the Florida chain store license tax act to the extent (but not otherwise) that it attempted to impose a greater tax liability if the stores of a chain are located in more than one county than would be the case were such stores located in a single county. The Act carries the now common saving clause—if certain portions are declared to be invalid such is not to be construed as affecting those portions that have not been held to be invalid (valid portions operative unless elimination of invalid provisions vitiates the entire Act). The Supreme Court of Florida (decision, June 6, 1933) holds that the invalid portions of the Act are severable and that the remainder (the Act was upheld *in toto*, originally, by the Florida Supreme Court, and sustained, except as stated, by the United States Supreme Court) is a valid statute, which means that, under the present decision, the law is to be administered and the taxes are to be applied as though, when enacted, there had been no attempt in the law to place an added burden on chains having stores in more than one county. *Louis K. Liggett Company v. J. M. Lee, Florida Comptroller, et al.*, 149 So. 8. Kay, Adams, Ragland & Kurz, of Jacksonville, for appellants. Cary D. Landis, Attorney General, and H. E. Carter, assistant, for the State.

Maryland.

Manner of computing, for collection, the Maryland Chain Store Tax. After deciding that the Maryland Chain Store Tax does not become operative until May 1, 1934, thus reversing the court below, on this point, the Court of Appeals of Maryland rules on how the amount of tax is to be computed. The law provides sliding scale rates, the applicable rate in any case being dependent on the number of stores operated as a chain; but the or a tax is to be collected by each county (and the city of Baltimore) wherein any unit or units of a chain are operated, such tax being for the benefit of the state, however. Question: Is the tax per county (and City of Baltimore) at the rate prescribed for the number of stores conducted in such jurisdiction or on the basis and at the rate for the total number of stores in the chain operating over the entire state? The court holds that the latter is the proper method. (The Attorney-General has expressed the opinion that each jurisdiction wherein one or more units of a chain are conducted should collect so much of the total state-wide tax as is in the proportion thereto of the stores in the jurisdiction to total number of stores in the chain.) *Read Drug & Chemical Co. v. Claypoole, Clerk of Common Pleas of Baltimore City, et al.*, 166 A. 742. Charles Markell and Randolph Barton, Jr., both of Baltimore (Piper, Carey & Hall, Barton, Wilmer, Ambler & Barton, and Cook & Markell, all of Baltimore, on the brief), for appellant. William Preston Lane, Jr., Atty. Gen., and William L. Henderson, Asst. Atty. Gen., for appellees.

CORPORATE MEETINGS HELD

During the past few months meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

Standard Power & Light Corp.
Interna'l Rys. of Central America
Northern States Power Co.
The Western Public Service Co.
Knickerbocker Ice Company
Continental Oil Co.
Flour Mills of America, Inc.
Standard Gas & Electric Corp.
Commonwealth & Southern Corp.
The Derby Oil & Refining Company
American Commercial Alcohol Corp.
Sterling Remedy Company
Allis Chalmers Mfg. Co.
George A. Fuller Company
Remington Rand Inc.
P. Lorillard Company
American Ice Company
Southern Dairies Inc.
International Business Machines Corporation of Maryland
Paramount Pictures Distributing Company, Inc.
General Outdoor Advertising Co., Inc.

Some Important Matters for October and November

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

NEW YORK—Quarterly Retail Sales Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.
Supplementary Franchise Tax Return (Form 60CT) due on or before November 30.—Dom. and For. Corporations organized or qualified between June 30 and Nov. 1 of current year.

NORTH CAROLINA—Annual Franchise Tax due on or before October 1, or within thirty days after date of notice if not mailed prior to September 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Chief Factory Inspector due during April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH DAKOTA—Quarterly Gross Income Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.

WEST VIRGINIA—Quarterly Gross Income Tax Return and Payment due on or before October 30.—Domestic and Foreign Corps.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Securities Act of 1933—Complete text of this important new law which constitutes in effect a National Blue Sky Law.

Rules and Regulations for Administration of the Securities Act—as promulgated by the Federal Trade Commission July 6, 1933. The initial and tentative rules and regulations under the new law, together with type reproduction of Form A-1 for registration statements.

Special Report—The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

Amendments to Delaware Corporation Law, 1933. Presents the complete text of the 1933 amendments to Chapter 65 of the Revised Code, all new matters being shown in italics, and repealed matter in brackets, so a complete picture is conveyed of the changes effected, while explanatory comments show the purpose and result of each change.

What Constitutes Doing Business. (Revised to March 1, 1933.) A 314-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1933.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.